

## REMARKS

Claims in the case are 1-6. Claims 1-6 have been amended, no claims have been added, and no claims have been cancelled herein. The claims have been amended for purposes of improved clarity and as to form, e.g., by modifying punctuation and replacing "according to" with --of--, and replacing "containing" with --comprising--. Claim 1 has been amended herein such that the optical brightener must include a compound represented by Formula-(2).

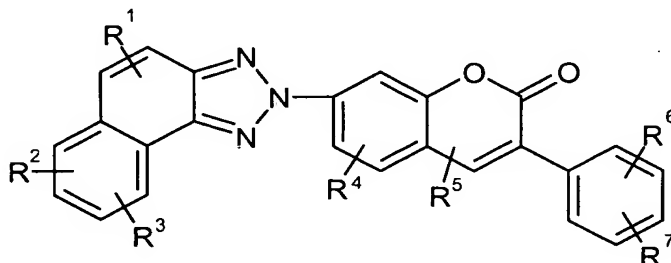
Claims 1-6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 5,837,757 (**Nodera et al**) in view of United States Patent No. 4,129,412 (**Günther et al**) and United States Patent No. 4,447,350 (**Martini et al**). This rejection is respectfully traversed in light of the amendments herein and the following remarks.

Nodera et al disclose flame-retardant polycarbonate resin compositions that are necessarily free of bromine. The compositions of Nodera et al are disclosed as including: polycarbonate resin; titanium oxide powder; a stilbene-bisbenoxazole derivative; and a non-halogen phosphate compound. Nodera et al disclose that the stilbene-bisbenoxazole derivative serves to improve light reflectance, while not interfering with the light fastness and heat resistance of the composition. See the abstract, and column 6, lines 26-53 of Nodera et al. Nodera et al disclose that the improved light fastness of their compositions is due to the absence of bromine therein (column 11, lines 65-66).

Günther et al disclose mixtures of optical brighteners that are composed of a combination of: (i) a 4-benzoxazolystilbene derivative; and (ii) a bis-benzoxazolyl-naphthalene derivative. See the abstract, and column 1, lines 4-63 of Günther et al. Günther et al teach away from using either of compounds (i) or (ii) alone, in that the combination thereof is disclosed as providing a higher degree of whiteness than that provided by either compound alone in equivalent amounts. See column 3, line 64 through column 4, line 9 of Günther et al.

Martini et al disclose mixtures of optical brighteners that are composed of a combination of: (i) a bis-benzoxazolyl-naphthalene based compound; and (ii) at least one compound selected from their formulas (2) through (10). See the abstract and column 1, line 7 through column 2, line 41 of Martini et al.

Nodera et al, Günther et al and Martini et al, either alone or in combination, do not disclose, teach or suggest a composition that includes an optical brightener represented by the following Formula-(2),



in which R<sup>1</sup>, R<sup>2</sup>, R<sup>3</sup>, R<sup>4</sup>, R<sup>5</sup>, R<sup>6</sup> and R<sup>7</sup> are as defined in Applicants' present claims. It should be noted that Formulas (2) through (10), and in particular Formulas (8) - (10) of Martini et al are structurally dissimilar relative to the above Formula-(2) of Applicants' present claims. "The test of obviousness *vel non* is statutory. It requires that one compare the claim's 'subject matter as a whole' with the prior art 'to which said subject matter pertains.'" *In re Ochiai*, 71 F.3d 1565, 1569 (Fed. Cir. 1995).

Nodera et al only disclose using stilbene-bisbenzoxazole derivatives alone. Nodera et al provide no disclosure, teaching or suggestion with regard to including stilbene-bisbenzoxazole derivatives in combination with other lightness improving compounds. Günther et al teach away from using 4-benzoxazolystilbene compounds alone.

Nodera et al disclose compositions that necessarily must include 4-benzoxazolystilbene compounds. Martini et al disclose optical brightener mixtures that necessarily do not contain 4-benzoxazolystilbene compounds. Martini et al provide no disclosure, teaching or suggestion as to including 4-benzoxazolystilbene compounds in their optical brightener mixtures.

Günther et al disclose mixtures of optical brighteners that must necessarily contain 4-benzoxazolystilbene compounds. Martini et al disclose mixtures of optical brighteners that are necessarily free of 4-benzoxazolystilbene compounds.

In light of the preceding remarks and comparisons, Nodera et al, Günther et al and Martini et al do not provide the requisite disclosure that would motivate a skilled artisan to combine or otherwise modify their respective disclosures in an attempt to arrive at Applicants' presently claimed composition. As the Court of Appeals for the Federal Circuit has stated, there are three possible sources for  
PO-7871

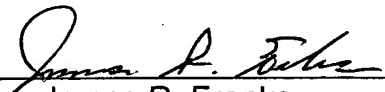
motivation to combine references in a manner that would render claims obvious. These are: (1) the nature of the problem to be solved; (2) the teaching of the prior art; and (3) the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). The nature of the problem to be solved and the knowledge of persons of ordinary skill in the art are not present here and have not been relied upon in the rejection. As for the teaching of the prior art, the above discussion has established that neither of the patents relied upon in the rejection provide the requisite teaching, and certainly do not provide the motivation or suggestion to combine that is required by Court decisions.

As discussed previously herein, even if combined, Nodera et al, Günther et al and Martini et al do not disclose, teach or suggest the composition of Applicants' claims, which includes an optical brightener represented by Applicants' Formula-(2).

In light of the amendments herein and the preceding remarks, Applicants' claims are deemed to be unobvious and patentable over Nodera et al in view of Günther et al and Martini et al. Reconsideration and withdrawal of the present rejection is respectfully requested.

In light of the amendments herein and the preceding remarks, Applicants' presently pending claims are deemed to define an invention that is unanticipated, unobvious and hence, patentable. Reconsideration of the rejections and allowance of all of the presently pending claims is respectfully requested.

Respectfully submitted,

By   
James R. Franks  
Agent for Applicants  
Reg. No. 42,552

Bayer MaterialScience LLC  
100 Bayer Road  
Pittsburgh, Pennsylvania 15205-9741  
(412) 777-3808  
FACSIMILE PHONE NUMBER:  
(412) 777-3902

f:\shared\kpl\jrf200.ame